IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5499 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESHKUMAR SADHURAM DEVNANI THRO HIS WIFE MONABEN N DEVNAN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 31-12-1999 passed by the District Magistrate, Ahmedabad and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, statements of three independent witnesses whose identity has not been disclosed have been recorded on 24-12-1999 and same has been verified by Dy. S.P. on 27-12-1999 and, therefore, right of the petitioner under Article 22(5) of the Constitution of India of making an effective representation has been affected. It is submitted that the detaining authority has not verified those statements. She has also drawn my attention towards the one word verification done by the Sub Divisional Magistrate. As per the arguments of the learned advocate for the petitioner, this is not a verification in the eye of law. In support of this contention, learned advocate for the petitioner has relied upon a decision reported in 1996(1) G.L.H. 300 in the case of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana and Others wherein at head note the Court has held as under:

> "Claim of privilege by the detaining authority in respect of statements of witnesses--The Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word `verified'--Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine--Continued detention illegal--Observations of Division Bench in the case of Koli Ashwin Vs. State of Gujarat in Special Criminal Application No.1812 of 1993 relied on".

4. It appears that the statements of witnesses have been verified by the Dy.S.P. as well as by the Sub Divisional Magistrate, but admittedly not by the detaining authority and, hence, the right of the petitioner under Article 22(5) of the Constitution of making an effective representation has been affected. In view of the above discussion, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other

points.

5. The petition is allowed. The impugned order of detention dated 31-12-1999 passed against the detenu is hereby quashed and set aside. The detenu-Nareshkumar Sadhuram Devnani is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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